

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 51 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

PRAVINBHAI NATUBHAI JADAV

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 51 of 2003
MR HR PRAJAPATI for Petitioner No. 1
Mr.V.M.Pancholi.AGP for Respondent No. 1-3
MS PJ DAVAWALA for Respondent No. 4
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CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 13/02/2003

ORAL JUDGEMENT

1. By filing this petition, the petitioner has
challenged the order of detention dated 12-11-2002 passed

against him by the District Magistrate, Kheda, Nadiad, whereby the petitioner has been detained under subsection 2 of Section 3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 ("PBM" for short).

2. The grounds of detention served upon the petitioner alongwith the order of detention indicate that the petitioner is a Clerk of a Co-operative Society known as Mahij Seva Sahakari Mandali", holding a licence for running a fair price shop in the village. It is alleged against the petitioner that at the time of inspection at the said fair price shop, it was found that the society diverted illegally certain quantity of blue kerosene which is an essential commodity and sold the same by charging a higher price, and accordingly, the petitioner has indulged himself in blackmarketing. At the time of inspection, the Inquiry Officer has also seized certain cards and also recorded the statement of certain card holders. It has been alleged against the petitioner that even if the licence issued to the petitioner is cancelled, the petitioner will move the Court and obtain stay, and thereby, continue with the illegal activities. Ultimately, the Sponsoring Authority forwarded the papers to the detaining authority and the detaining authority having been satisfied that the petitioner has indulged in blackmarketing activity, passed the order of detention against the petitioner, and the petitioner is accordingly detained by way of preventive detention under the provisions of "PBM.

3. At the time of hearing of the petition, it is argued by the learned Advocate for the petitioner, Mr. Prajapati that the petitioner, at the relevant time, was rendering service as a Clerk of the Society, but he was in no way connected with the day to day affairs of the society. It is also submitted that even after the aforesaid incident, the concerned department has not cancelled or even suspended the licence given to the fair price shop of the society at any point of time. He, therefore, submitted that if the society was dealing in any such illegal activity of blackmarketing and if really the authority wanted to curb the same, the first step which was required to be taken by the authority was to suspend or cancel the licence issued to the Society. He further submitted that the authority has also not properly addressed itself as to why the less drastic remedy which was available under law has not been resorted to by cancelling or suspending the licence issued to the Society.

4. I have gone through the order of detention as also the grounds of detention served upon the petitioner alongwith it. It is interesting to note that the licence is issued in the name of the Society and not to the petitioner in his personal capacity. Till today even the licence issued to the fair price shop of the Society is not cancelled or suspended and there is no explanation coming forth on record explaining this position. The detaining authority has merely made a vague statement in the detention order that, no doubt it is true that steps can be taken to cancel the licence of the petitioner, but the petitioner may take appropriate proceedings in the Court and obtain interim order, and therefore, the said remedy is not appropriate remedy. However, there is no material whatsoever for coming to such conclusion. Thus, the detaining authority has not properly appreciated the aforesaid aspect and has taken a very casual approach in the matter inasmuch as the licence is issued in the name of the Society and not to the petitioner in his personal capacity and therefore, the impugned order suffers from the vice of non application of mind on the part of the detaining authority. Thus, there is no logical explanation as to why the less drastic remedy of cancellation of licence is not resorted to by the detaining authority even though available. Under these circumstances I am constrained to hold that non consideration of availability of less drastic remedy by the detaining authority as also the mechanical exercise of power by the detaining authority has vitiated the subjective satisfaction rendering the detention order invalid. In that view of the matter the impugned order of detention deserves to be quashed and set aside.

5. On the basis of the aforesaid discussion, the petition is allowed. The order of detention dated 12-11-2002 passed against the petitioner-detenu by the District Magistrate, Kheda at Nadiad, is hereby quashed and set aside. The petitioner-detenu-Pravinbhai Natubhai Jadav is ordered to be released forthwith, if not required in any other case. Rule is made absolute accordingly.

(P.B.Majmudar, J.)

stanley-pbm.